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**DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE**

19 CFR PARTS 4, 24, 101

RIN 1515-AC63

USER AND NAVIGATION FEES; OTHER REIMBURSEMENT CHARGES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations regarding the proper assessment of user and navigation fees, as well as other reimbursement charges for Customs services performed in connection with, among other things, the processing of vehicles, vessels, aircraft and merchandise arriving in the United States.

It is believed that the proposed amendments would conform the regulations with the intent of the Customs user fee statute. The proposed amendments also reflect existing operational policy and administrative practice in this area.

DATES: Comments must be received on or before [60 days from May 1, 2001.]

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229

FOR FURTHER INFORMATION CONTACT:

Kimberly Nott, Office of Field Operations, 202-927-1364.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs user fee statute, codified at 19 U.S.C. 58c, authorizes a schedule of fees that are chargeable to users of various services provided by Customs in connection with the activities that are listed in section 58c(a). Under the user fee statute, in pertinent part, a fee is charged to reimburse the Government for Customs services that are provided, among other things, for processing certain vehicles, vessels, aircraft and merchandise that arrive in the United States. In particular, a user fee is charged for Customs services that are provided in connection with the arrival of a commercial vessel of 100 net tons or more (19 U.S.C. 58c(a)(1)), and in connection with the arrival of a private vessel or private aircraft (19 U.S.C. 58c(a)(4)).

Definition of Arrival for Purposes of the User Fee Statute

For purposes of the applicability of a user fee for providing Customs services in connection with the arrival of a vessel or aircraft as described above, the statute generally defines the term “arrival” as being an arrival that occurs within a port of entry in the Customs territory of the United States (19 U.S.C. 58c(c)(2)). Each Customs port

of entry has specific geographical limits that are defined by regulation (19 CFR 101.3(b)).

Section 58c is implemented by § 24.22, Customs Regulations (19 CFR 24.22). Section 24.22(a)(2), however, defines the term “arrival” as being an arrival within a Customs port of entry or any place serviced by any such port. Customs has concluded that this definition of arrival is overbroad and conflicts with a more suitable definition of arrival in section 58c, which, on its face, clearly does not mean to require the assessment of a user fee at every location serviced by Customs.

Accordingly, Customs proposes to amend § 24.22(a)(2) to define an arrival as occurring at any place within the limits of a Customs port of entry or at a designated Customs station. A Customs station is any place other than a port of entry where Customs officers or employees are lawfully stationed to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States (19 CFR 101.1). However, under the proposed amendment, for purposes of the applicability of user fees in accordance with 19 U.S.C. 58c(c)(2), a Customs station would essentially be considered as the functional equivalent of a Customs port of entry. The definition of “Customs station” in § 101.1, Customs Regulations (19 CFR 101.1) would be amended to conform with this.

A list of places that have been designated as Customs stations appears in

§ 101.4(c), Customs Regulations (19 CFR 101.4(c)); also, Customs stations may be temporarily designated as such by the port director as provided in § 101.4(d), Customs Regulations (19 CFR 101.4(d)).

Customs believes that the definition of arrival in proposed § 24.22(a)(2) would conform with the intent of the user fee statute. Moreover, it reflects existing Customs operational policy and administrative practice in this area. Further, the definition would simplify the collection of user fees by listing the specific locations where only these fees are applicable and must be assessed for Customs services.

In this latter respect, where user fees are assessed under section 58c, the law is quite clear that no charges other than user fees may be collected to reimburse the Government for any cargo inspection, clearance, or other Customs activity, expense or service performed (even on an overtime basis); or for any Customs personnel provided in connection with the arrival or departure of a commercial vessel, or its passengers, crew, stores, material, or cargo, for the United States (19 U.S.C. 58c(e)(6)(A)(i) and (ii)).

**User Fees, Navigation Fees, Other Reimbursement Charges;
Arrival of Commercial Vessel**

In cases where Customs user fees do not apply, the cost of Customs services is reimbursable to the Government under the circumstances and to the extent otherwise specifically authorized in the law. The specific circumstances where the cost of Customs services would be otherwise reimbursable to the Government are described in

§ 24.17, Customs Regulations (19 CFR 24.17). Furthermore, certain navigation fees for vessels, as listed in § 4.98, Customs Regulations (19 CFR 4.98), may be assessed as well, to the extent they are also applicable (19 CFR 24.21(b)(1)).

The services listed in § 4.98(a)(1) for which a navigation fee is applicable relate to the arrival of any vessel. However, § 4.98(a) would conflict with proposed § 24.22(a)(2), and with the user fee statute, insofar as it also requires the collection of a navigation fee for Customs services that are provided in connection with the arrival of a commercial vessel of 100 net tons or more or any private vessel in a Customs port of entry or a designated Customs station where, as already mentioned, a user fee would apply (19 U.S.C. 58c(a)(1)). The user fee would of course include Customs services as enumerated in § 4.98(a)(1). Accordingly, it is proposed to amend the introductory text of paragraph (a)(1) in § 4.98 to exclude the assessment of navigation fees on commercial vessels of 100 net tons or more and on any private vessels that arrive within a Customs port of entry or a designated Customs station, where user fees would apply to these vessels.

In addition, § 24.17(a)(4), Customs Regulations (19 CFR 24.17(a)(4)), currently requires that the owner, master, or agent of a vessel sought to be entered must reimburse the Government for the salary and expenses of any Customs officer or employee stationed at or sent to a designated Customs station or any other place that is not a port of entry for services rendered in connection with the entry or clearance of the vessel.

As such, § 24.17(a)(4) would also be in conflict with the definition of arrival in proposed § 24.22(a)(2), and with the user fee statute, to the extent that it requires reimbursement other than user fees at a designated Customs station. Accordingly, it is proposed to revise § 24.17(a)(4) to require reimbursement for services afforded by Customs at any place that is not a port of entry or a designated Customs station. For the same reason, §§ 24.17(a)(5) and 101.4(b)(3) would be similarly revised.

**User Fees, Other Reimbursement Charges;
Arrival of Private Vessel or Private Aircraft**

Section 58c(a)(4), as noted, provides for an annual user fee to cover Customs services that must be furnished in processing the arrival of a private vessel or private aircraft. Section 24.22(e)(1), which implements this provision, requires, however, that, notwithstanding payment of the user fee under section 58c, all overtime charges provided for Customs services remain payable as well. Again, as previously discussed, the user fee statute precludes the assessment of other charges, including charges for overtime services, where user fees are applicable (19 U.S.C. 58c(e)(6)(A)(i)). Accordingly, it is proposed to amend § 24.22(e)(1) by removing the provision allowing for the collection of overtime charges.

COMMENTS

Before adopting this proposal as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed amendments are intended to conform with statutory law, reflect existing Customs operational policy and administrative practice, and simplify the collection of user fees by listing the specific locations where only these fees are applicable and must be assessed for Customs services. Accordingly, it is certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that, if adopted, the proposed rule will not have a significant economic impact on a substantial number of small entities. Nor do the proposed amendments meet the criteria for a “significant regulatory action” under E.O. 12866.

LIST OF SUBJECTS

19 CFR PART 4

Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Entry, Fees, Fishing vessels, Freight, Harbors, Imports, Landing, Maritime carriers, Merchandise, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR PART 24

Customs duties and inspection, Fees, Harbors, Reporting and recordkeeping requirements, User fees.

19 CFR PART 101

Customs duties and inspection, Customs ports of entry, Harbors, Reporting and recordkeeping requirements, User fees.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed that parts 4, 24, and 101, Customs Regulations (19 CFR parts 4, 24, and 101) be amended as set forth below.

PART 4 - VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 would continue to read as follows, and the specific authority citation for § 4.98 would be revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.98 also issued under 19 U.S.C. 58a;

* * * * *

2. It is proposed to amend § 4.98 by revising the introductory text of paragraph (a)(1) to read as follows:

§ 4.98 Navigation fees.

(a)(1) The Customs Service will publish a General Notice in the **FEDERAL REGISTER** and Customs Bulletin periodically, setting forth a revised schedule of navigation fees for the following services provided to commercial vessels of 100 net tons or more and any private vessels that arrive at a place other than a Customs port of entry or a designated Customs station and to commercial vessels of less than 100 net tons that arrive anywhere in the United States, including a Customs port of entry or a designated Customs station :

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PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general and relevant specific authority citations for part 24 would continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112 ;

* * * * *

2. It is proposed to amend § 24.17 by revising the first sentence of paragraph (a)(4) and by revising paragraph (a)(5) to read as follows:

§ 24.17 Reimbursable services of Customs employees.

(a) * * *

(4) When a Customs employee is assigned pursuant to § 101.4 of this chapter to a place which is not a port of entry or a designated Customs station for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel will be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns. * * *

(5) When a Customs employee is assigned under the authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or designated Customs station or to supervise the unloading of cargo, the private interest will be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns.

* * * * *

3. It is proposed to amend § 24.22 by revising paragraph (a)(2) to read as set forth below; and by removing the last sentence of paragraph (e)(1):

§ 24.22 Fees for certain services.

(a) Definitions. * * *

* * * * *

(2) The term arrival means arrival at any place within the limits of a port of entry in the Customs territory of the United States, at any designated Customs station as listed in § 101.4(c) of this chapter, or at any temporary Customs station designated by the port director under § 101.4(d) of this chapter.

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PART 101 - GENERAL PROVISIONS

1. The general and relevant specific sectional authority citations for part 101 would continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

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2. It is proposed to amend § 101.1 by revising the definition for “Customs station” to read as follows:

§ 101.1 Definitions.

* * * * *

Customs station. Other than for purposes of assessing user fees under 19 U.S.C. 58c where a “Customs station” is the functional equivalent of a port of entry, a

“Customs station” is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President’s Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.

* * * * *

3. It is proposed to amend § 101.4 by revising the section heading, paragraph (b), introductory text, and paragraph (b)(3) to read as follows:

§ 101.4 Entry and clearance of vessels at Customs stations and places other than a port of entry.

* * * * *

(b) Authorization to enter. Authorization to enter or be cleared at a Customs station, or any other place that is not a port of entry, will be granted by the director of the port under whose jurisdiction the station or place falls provided the port director is notified in advance of the arrival of the vessel concerned and the following conditions are met:

* * * * *

(3) The owner, master, or agent of a vessel sought to be entered at a place other than a port of entry or designated Customs station reimburses the

Government for the salary and expenses of the Customs officer or employee stationed at or sent to such other place which is not a port of entry or a designated Customs station for services rendered in connection with the entry or clearance of the vessel, and

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Commissioner of Customs
Raymond W. Kelly

Approved: October 26, 2000

Deputy Assistant Secretary of the Treasury
John P. Simpson